

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

KIMBERLY V. BRACEY

PLAINTIFF

VS.

CIVIL ACTION NO.: 3:16-CV-657-DPJ-FKB

**CITY OF JACKSON, MISSISSIPPI;
MAYOR TONY YARBER INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY;
JOHN DOES 1-3**

DEFENDANTS

PLAINTIFF'S MOTION TO COMPEL

COMES NOW Plaintiff by and through counsel and serves this her Motion to Compel. In support, Plaintiff attaches the following exhibits:

- A. Discovery to Defendant Yarber;
- B. Affidavit of Nick Norris;
- C. Good Faith Letter and Certificate;

For the reasons explained in Plaintiff's supporting memorandum brief, the Plaintiff's Motion to Compel should be granted.

THIS the 13th day of April, 2017.

Respectfully submitted,
s/ Nick Norris

NICK NORRIS. (MB# 101574)
Attorney for Plaintiff

OF COUNSEL:

WATSON & NORRIS, PLLC
1880 Lakeland Drive
Suite G
Jackson, Mississippi 39216
(601) 968-0000
Fax: (601) 968-001

nick@watsonnorris.com

CERTIFICATE OF SERVICE

I, Nick Norris, attorney for Plaintiff, do hereby certify that I have this day served a true and correct copy of the above and foregoing pleading via ECF filing or by United States Mail with postage fully prepaid thereon to all counsel of record:

SO CERTIFIED, this the 13th day of April, 2017.

s/ Nick Norris

NICK NORRIS

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**PLAINTIFF'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS
AND REQUESTS FOR ADMISSION TO DEFENDANT TONY YARBER**

COMES NOW Kimberly V. Bracey, Plaintiff, by and through her attorney, and propounds these Interrogatories, Requests for Production of Documents and Requests for Admission to Defendant, Tony Yarber, to be answered in accordance with the Federal Rules of Civil Procedure. Defendant shall please produce the responses requested at the offices of Watson & Norris, PLLC, 1880 Lakeland Drive, Suite G, Jackson, Mississippi 39216 within 30 days of service.

General Instructions

1. If any of these interrogatories cannot be answered in full, then Defendant should answer to the extent possible and specify the reasons for his inability to answer the remainder, and should state whatever information or knowledge he has concerning the unanswered portion. For example, in answer to the interrogatories concerning witnesses and documentary evidence, please identify as many witnesses and proposed exhibits as possible, rather than stating "unknown at this time."

2. In answering these interrogatories, please furnish such information as is known or is available to Defendant, regardless of whether this information is obtained directly by, or known to, or obtained by, any of his attorneys or other agents or representatives.

Definition of Terms

3. Throughout these interrogatories, including the definition of terms, the words used in the masculine gender include the feminine; and words used in the singular include the plural. Where the word "or" appears herein, the meaning intended is the logical inclusive "or" i.e., "and/or." Where the word "include" or "including" appears, the meaning intended is "including but not limited to."
4. As used throughout these interrogatories, the following terms have the following meanings indicated:
 - (a) "Date" means the exact day, month and year, if ascertainable, or if not, the best approximation (including relationship to other events).
 - (b) "Person" means any individual, corporation, proprietorship, partnership, association or any other entity.
 - (c) "Document," as defined by Rule 34 of the Federal Rules of Civil Procedure, includes all writings, drawings, graphs, charts, photographs, phone records, tape recordings, and other data compilations from which information can be obtained or translated.
 - (d) "Identify" when referring to a person, as defined above, means to state the following:

- (1) The name of that person;
 - (2) The address of that person;
 - (3) If the present residence or business address is unknown, state the last known address and any other information you have that might reasonably lead to that person being located;
 - (4) The telephone number for that person (home and business where applicable) or that person's last known telephone number;
 - (5) If that person is an individual, state his employer, his position with and duties for that employer and the address of that employer.
- (e) "Identify" when referring to a document, as defined above, means to please produce the following information:
- (1) The date of the document;
 - (2) The title of the document;
 - (3) The identity of the person by whom the document was prepared;
 - (4) The identity of the person for whom the document was prepared;
 - (5) The subject matter covered by the document;
 - (6) The present location of the document;

- (7) The custodian of the document, including his name, address, and business telephone number.
- (f) "Identify" when referring to an oral communication (report) means to Please produce:
 - (1) The date of the report;
 - (2) Identify the person by whom the report was made;
 - (3) Identify the person to whom the report was made;
 - (4) Identify persons who witnessed or heard the report, or in whose presence the report was made;
 - (5) State where the report was made;
 - (6) State the contents of the report.
- (g) "Description" or "to describe" means to please produce a narrative detailed chronological history of the incident or event(s) inquired about, including pertinent dates, identifying persons involved, and identifying documents utilized or generated.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify by name, address, telephone number and present employer each and every person Defendant Yarber believes has knowledge of any facts relevant to Plaintiff's claims in this action. For each such individual identified, describe what knowledge you believe said individual has.

INTERROGATORY NO. 2:

Identify all documents which in any way support, pertain to, or relate to the subject matter of this lawsuit or the claims asserted in your Answers to Plaintiff's Complaint.

INTERROGATORY NO. 3:

Identify all sexual harassment claims against any current or past employers in regards to Defendant Tony Yarber for the last ten (10) years. Please identify the name, address, and telephone number of the charging party and explain how the matter was resolved or concluded.

INTERROGATORY NO. 4:

Please explain in detail each and every fact or event of which Defendant Yarber is aware which support Defendant's allegation that the Plaintiff was not discriminated or retaliated against.

INTERROGATORY NO. 5:

Are you aware of the existence of any written or recorded statement(s) made by or for any party or witness pertaining to the facts of this case? If so, state:

- (a) The name of each person making the statement;
- (b) The date of the statement;
- (c) The name, employer, occupation, last known address, and telephone number of the person taking the statement;
- (d) The name and last known address and telephone number of the person now in possession of the original statement or a copy of same.

INTERROGATORY NO. 6:

Did your attorney or anyone acting on your behalf conduct an investigation concerning the subject incidents regarding the Plaintiff? If so, please state the name, address, and telephone number of the person now having custody of each written report made concerning each investigation.

INTERROGATORY NO. 7:

Please describe in detail each and every fact that supports Defendant Yarber's legitimate, non-discriminatory reason for terminating Plaintiff.

INTERROGATORY NO. 8:

Please identify all similar positions that Defendant contends Plaintiff should have applied for that were available after Plaintiff's employment with Defendants. Please include the title of the position, the employer, the rate of pay, when the position was open, and how it was advertised.

INTERROGATORY NO. 9:

Please identify any legal advice Defendant received regarding terminating Plaintiff prior to the termination. Please include the date, whether it was oral or in writing, the identity of the individuals that were part of the conversation, and the content of that advice.

INTERROGATORY NO. 10:

Please identify all steps Defendant Yarber took to preserve electronic evidence after receiving Plaintiff's preservation letters.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1:

Please produce all documents identified in response to the foregoing interrogatories.

REQUEST NO. 2:

Please produce copies of any recordings, audio-tapes, email or videotape that Defendant has in its possession involving the Plaintiff.

REQUEST NO. 3:

Please produce a copy of all insurance policies and/or agreements providing coverage and/or a defense for the claims asserted by Plaintiff.

REQUEST NO. 4:

Please produce all documentation identified in Defendants' Pre-Discovery Disclosures.

REQUEST NO. 5:

Please produce all e-mails and text messages in Defendant Yarber's possession to or from Plaintiff

REQUEST NO. 6:

Please produce all e-mails and text messages in Defendant Yarber's possession that relate to Plaintiff.

REQUEST NO. 7:

Please produce all Facebook messages between Defendant Yarber and Amanda Williams.

REQUEST NO. 8:

Please produce for inspection Defendant Yarber to Capital DNA Testing, LLC at a mutually convenient time so that DNA can be retrieved from Defendant Yarber for comparison testing.

REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

Please admit that Plaintiff was hired by Defendant on April 24, 2014 as an Executive Assistant to the Mayor, Tony Yarber.

REQUEST FOR ADMISSION NO. 2:

Please admit that Defendant Tony Yarber was in a position of direct authority over Plaintiff when she was initially hired.

REQUEST FOR ADMISSION NO. 3:

Please admit that during Plaintiff's employment, Defendant, Tony Yarber, engaged in a sexual relationship with Plaintiff.

REQUEST FOR ADMISSION NO. 4:

Please admit that Defendant Yarber engaged in numerous sexual relationships with other women during the time around May 2014.

REQUEST FOR ADMISSION NO. 5:

Please admit that Plaintiff ended her consensual relationship with Defendant Yarber in July 2014.

REQUEST FOR ADMISSION NO. 6:

Please admit that Defendant Yarber transferred Plaintiff to be supervised by other staff members after she ended her consensual relationship with Defendant Yarber.

REQUEST FOR ADMISSION NO. 7:

Please admit that after Plaintiff tried to end the sexual relationship with Defendant Yarber, Defendant Yarber began forcing Plaintiff to continue the sexual relationship by making it clear that she could be terminated if she did not have sex with him.

REQUEST FOR ADMISSION NO. 8:

Please admit that Defendant Yarber requested Plaintiff to encourage another female to give Defendant Yarber oral sex in exchange for Plaintiff's guaranteed employment.

REQUEST FOR ADMISSION NO. 9:

Please admit that in May or June 2014, Plaintiff was required to attend a fundraiser arranged by Marshand Crisler in New Orleans, Louisiana.

REQUEST FOR ADMISSION NO. 10:

Please admit that the same night, Plaintiff attend a dinner at a restaurant in New Orleans, hosted by Mitzi Bickers, where numerous city staff members were in attendance.

REQUEST FOR ADMISSION NO. 11:

Please admit that later that same night, Plaintiff, Defendant Yarber, Jason Goree, Torrence Mayfield and Jackie Anderson Woods met Ms. Bickers at a strip club where Ms. Bickers paid for everything.

REQUEST FOR ADMISSION NO. 12:

Please admit that while at the strip club, Plaintiff and Mr. Mayfield were required to watch the door where Mayor Yarber and one of the strippers went into to be alone.

REQUEST FOR ADMISSION NO. 13:

Please admit that in August 2014, Plaintiff was required to attend another fundraiser for Defendant Yarber in Atlanta, Georgia, that was hosted by Mitzi Bickers.

REQUEST FOR ADMISSION NO. 14:

Please admit that after the fundraiser, Defendant Yarber, Plaintiff, Jackie Woods, Artie Stuckey and Jason Goree rode by boat with Ms. Bickers to one of Ms. Bicker's friend's house.

REQUEST FOR ADMISSION NO. 15:

Please admit that while at this same house, Plaintiff and others were greeted by strippers wearing only body paint.

REQUEST FOR ADMISSION NO. 16:

Please admit that in August or September 2014, Plaintiff was required to attend another fundraiser for Defendant Yarber and Tyrone Lewis in Atlanta that was hosted by Mitzi Bickers.

REQUEST FOR ADMISSION NO. 17:

Please admit that the next day after the fundraiser, Plaintiff was required to go with Defendant Yarber for another gathering at Ms. Bickers' home.

REQUEST FOR ADMISSION NO. 18:

Please admit that when Plaintiff and Defendant Yarber arrived at Ms. Bickers' home on this occasion, they were again greeted by strippers wearing only body paint.

REQUEST FOR ADMISSION NO. 19:

Please admit that in early April 2015, Plaintiff chose to refuse any further advances from Defendant Yarber even if it meant her employment would be terminated.

REQUEST FOR ADMISSION NO. 20:

Please admit that in April 26, 2015, Plaintiff was falsely accused by Mayor Yarber of unauthorized use of city equipment for personal use.

REQUEST FOR ADMISSION NO. 21:

Please admit that Plaintiff was then placed under the supervision of Beatrice Slaughter and told by email from Mayor Yarber, who copied the City Attorney on the email, that Plaintiff would no longer be under the supervision of Jackie Woods.

REQUEST FOR ADMISSION NO. 22:

Please admit that on April 27, 2015, Plaintiff was abruptly terminated by Mayor Yarber.

REQUEST FOR ADMISSION NO. 23:

Please admit that City of Jackson, MS employees unlawfully accessed Plaintiff's private Google e-mail account to assert Plaintiff was using city equipment for personal use.

REQUEST FOR ADMISSION NO. 24:

Please admit that Plaintiff had verbal authorization from her director, Beatrice Slaughter, to use the city's equipment to make copies for her husband's campaign and to keep a log of the copies

THIS, the 31st day of January 2017.

Respectfully submitted,

/s/ Nick Norris
NICK NORRIS (MSB#101574)
Attorney for Plaintiff

OF COUNSEL:

WATSON & NORRIS, PLLC
1880 Lakeland Drive, Suite G
Jackson, MS 39216
Phone: (601) 968-0000
Facsimile: (601) 968-0010
nick@watsonnorris.com

CERTIFICATE OF SERVICE

I, Nick Norris, attorney for Plaintiff do hereby certify that I have this day filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing or mailed, via United States Mail, postage prepaid, on all counsel of record.

THIS, the 31st day of January 2017.

/s/Nick Norris
NICK NORRIS

**THE UNITED STATES DISTRICT COURT
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AFFIDAVIT OF NICK NORRIS

1. My name is Nick Norris. I am over the age of eighteen years old.

I state the following based upon my own personal knowledge and am competent to testify as to these matters.

2. On January 31, 2017, Plaintiff filed notices of service of Interrogatories , Requests for Admissions and Request for Production of Documents, and served the discovery upon Defendants.

3. On February 22, 2017, counsel for Defendant City of Jackson sent an e-mail to Plaintiff's counsel requesting until April 3, 2017, to respond to written discovery. Plaintiff agreed to this extension. While the City of Jackson did not respond to discovery by April 3, 2017, it notified the Plaintiff that it will respond by the end of the week and its delay in responding is because it will be producing around 8,000 pages of documents that have been requested by Plaintiff.

4. In contrast, Defendant Yarber has never requested an extension from Plaintiff or the Court to respond to written discovery. After Defendant Yarber missed the deadline, I sent Defendant Yarber's counsel a good faith letter on March 7, 2017, in hopes

Exhibit "B"

that this would encourage Defendant Yarber to respond to written discovery.

3. Instead of responding to the good faith letter, Defendant Yarber only sent Plaintiff written discovery to answer.

4. When Defendant Yarber again did not respond to written discovery I requested a discovery conference before the Court. On March 21, 2017, the Court held a telephonic discovery hearing.

5. I informed the Court that Defendant Yarber had not responded to discovery, had not requested any extension, had not informed the Plaintiff when he would respond to discovery and Defendant's only response to the good faith letter was by sending written discovery to Plaintiff to answer. Defendant Yarber's counsel informed the Court that Defendant Yarber had asserted to his counsel that he had already given his counsel the responses to discovery; however, Defendant Yarber's counsel confirmed she had received no such responses.

6. The Court questioned as to why I was pushing discovery responses so early as it was out of the ordinary. I explained to the Court that the Plaintiff's expert designation deadline is currently May 3, 2017, and that Plaintiff needs Defendant Yarber to submit to a DNA test to complete the expert designation. I also explained while it is almost certain Plaintiff will have to seek an extension of the deadline, Plaintiff wants to make sure it is clear to the Court that Plaintiff has been seeking the DNA test since prior to the Case Management Conference and throughout discovery so it will be clear that Defendant Yarber's failure to respond that has caused the delay. At the end of the conference the

Court granted Plaintiff leave to file a motion to compel, but asked the parties to continue to attempt to resolve the situation.

7. More than two weeks have passed with no responses from Defendant Yarber and no indication of any intent to respond any time soon. In contrast, the City has responded to discovery on April 13, 2017, and Plaintiff has timely responded to written discovery both parties on March 31, 2017.

8. In addition, Defendant Yarber has not returned the good faith certificate I sent to his attorneys.

I declare under penalty of perjury that the above and foregoing is true and correct as therein stated.

Further Affiant saith not.

Executed this the 13th day of April, 2017.

/S NICK NORRIS

NICK NORRIS

WATSON & NORRIS, PLLC

Attorneys at Law

1880 LAKELAND DRIVE, SUITE G
JACKSON, MISSISSIPPI 39216

TELEPHONE: 601.968.0000
FACSIMILE: 601.968.0010

March 7, 2017

Via Email and U. S. Mail

M. Judith Barnett
M. JUDITH BARNETT, P.A.
1911 Dunbarton Drive
Jackson, Mississippi 39216

**Re: Kimberly Bracey v. City of Jackson and Mayor Tony Yarber
CIVIL ACTION NO. 3:16-CV-657 DPJ-FKB**

Dear Ms. Barnett:

Plaintiff propounded interrogatories, requests for admission and requests for production to Defendants on January 31, 2017, making Defendants' responses to discovery due on March 2, 2017. As of this date, March 7, 2017, Plaintiff has received no responses from Defendant, Tony Yarber. Please consider this letter a good faith attempt to resolve this issue without requesting the Court's assistance. Please respond to Plaintiff's discovery no later than Friday, March 10, 2017.

If Defendant refuses to respond by this date, please execute and return the attached good faith certificate.

s/Nick Norris
NICK NORRIS

NN/lp

Exhibit "C"

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GOOD FAITH CERTIFICATE

All counsel certify that they have conferred in good faith to resolve the issues in question and it is necessary to file a Motion to Compel.

Counsel further certify:

- ___ (1) The filed motion is unopposed by all parties.
- ___ (2) The filed motion is unopposed by _____.
- ___ (3) The filed motion is opposed by Defendant.
- ___ (4) The parties agree that the reply and rebuttal to the filed motion shall be submitted to the Judge in accordance with the time limitations set forth in Rule 7.2.

This, the ___ day of March 2017.

Nick Norris, Esq.
Attorney for Plaintiff

M. Judith Barnett, Esq.
Attorney for Defendant, Tony Yarber